

VOLUME I (EXCERPT)  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK  
-----x  
UNITED STATES OF AMERICA

vs. 5:11-CR-602

JOSEPH VINCENT JENKINS,

Defendant.

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Transcript of a Jury Trial held on February 3,  
2014, at the James Hanley Federal Building, 100  
South Clinton Street, Syracuse, New York, the  
HONORABLE GLENN T. SUDDABY, United States District  
Judge, Presiding.

A P P E A R A N C E S

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1                   (Jury Selection was conducted and the jury was  
2                   duly sworn.)

3                   THE CLERK: Thank you, you may be seated.

4                   THE COURT: Okay. First order of business, I'm  
5 going to give you a break, I'm going to have Bruce, our court  
6 security officer, show you back into that jury room, that's  
7 where you're going to be reporting every day, you can keep  
8 your things there, that's going to be your home away from  
9 home this week.

10                  Trial schedule. Here's what I do. I start every  
11 day at 9:00. We'll endeavor to start on time. Sometimes  
12 there might be a short delay if we have some legal argument  
13 with the attorneys before you come out here but we are going  
14 to ask you to be in that jury room to start at 9:00 in the  
15 morning. And there is always some sort of breakfast food in  
16 there, not always going to promise you it's the most healthy  
17 thing, doughnuts, bagels, muffins, all that kind of stuff but  
18 it's there for you if you want it. And I go every day until  
19 4:30, I try and get you out of here by 4:30 so that, you  
20 know, you can beat some of the rush hour traffic, get out of  
21 downtown and it's still getting dark kind of early so I try  
22 to get you out of here a little bit early. One caveat. That  
23 is, if we have a witness on the stand that these attorneys  
24 tell me, Judge, if you spend five, ten minutes more, we can  
25 finish this witness up and they don't have to come back

1 tomorrow morning, I'm probably going to do that, all right.  
2 But have in mind that I'm looking to break at 4:30 or shortly  
3 thereafter. There will be a morning break, an afternoon  
4 break.

5 You always, please, let the court security officer  
6 know, let the court staff know if you need a break, just let  
7 us know, give us a high sign, something, we'll give you a  
8 break, okay. If you need to stand up and stretch, there's  
9 going to be times when the attorneys are up here talking to  
10 me at the bench the way they have today, that's a time, feel  
11 free to stand up and stretch. I want you to be comfortable  
12 in this courtroom. Your tax dollars pay for it, okay, this  
13 is your courthouse, this is your courtroom, I want you to be  
14 comfortable. There's obviously rules that we follow like no  
15 food in here, you can bring bottles of water in which we will  
16 provide for you, and I'll give you some other preliminary  
17 instructions in a few minutes, but first of all, we're going  
18 to take a break, let you do that. If you have any things in  
19 the back, please collect them and take them into the jury  
20 room with you if you don't have them with you.

21 And please, as I admonished earlier today, don't  
22 talk about this case at all, with anybody. If anybody  
23 approaches you and tries to talk to you about this case, I  
24 need to know about it immediately. Now, that doesn't mean  
25 that you can't talk with your fellow jurors, I encourage you

1 to be friendly, talk about anything under the sun that you  
2 want to talk about except for this case, okay. We'll move it  
3 right along. So we're going to take a break, bring you out  
4 here, I'm going to give you a preliminary charge on the law  
5 and then we're going to have these attorneys give their  
6 opening statements on this criminal case. And once we're  
7 done with those opening statements, we'll see what time it is  
8 and decide whether we want to call any witnesses today or if  
9 it's time to send you home, okay, with that 4:30 rule. All  
10 right. Any questions? All right. We'll take about a  
11 five-minute break. Go ahead.

12 (Jury Excused, 3:27 p.m.)

13 THE COURT: Mr. Jenkins, the same thing, if you  
14 ever need a break or something, please just let Mr. Goldsmith  
15 know. The only difference is that if we're going to move  
16 you, we have to do it with the jury out of the room, so I  
17 just, and if you need to just get to him, let me know, he can  
18 ask to take a break, I'll get the jury out of the room and  
19 let you go use the facilities whenever you need to, okay?

20 THE DEFENDANT: All right.

21 THE COURT: All right.

22 (Court in recess, 3:29 p.m. to 3:41 p.m.)

23 (Open Court, Jury Out.)

24 THE COURT: Is the government ready? We're going  
25 to bring this jury in, I'm going to do a preliminary

1 instruction, and then we will go on to opening statements.

2 Defense counsel all set?

3 MR. GOLDSMITH: Ready.

4 THE COURT: Okay. And it doesn't look like --  
5 we'll see what time it is, but I don't know that it makes any  
6 sense to try to start a witness, but we'll see, okay. Please  
7 bring them in.

8 (Jury Present.)

9 THE COURT: Please be seated. We're missing  
10 somebody. Looks like it's fine except for one juror. There  
11 we go, we found them.

12 Okay. The record should reflect we have the ladies  
13 and gentlemen of the jury, government and defense counsel and  
14 the defendant. One more housekeeping issue. As I indicated,  
15 you can bring water in here, nothing else, but when you come  
16 into the courtroom, you're going to notice that everybody's  
17 standing up in the courtroom, okay. You come in and sit  
18 right down. The reason they're standing, it's an old  
19 tradition and it's a very nice one that I agree with firmly,  
20 they stand in honor of your service, the fact that you're  
21 here performing a service as citizens of this country, so  
22 when a jury comes into a courtroom, the litigants and  
23 attorneys all stand until you're here and seated. So come  
24 right in and sit right down, okay. Sometimes I have jurors  
25 come in the courtroom and say, am I supposed to be standing

1 or sitting? Come right in and sit down, okay, that's what  
2 that's about.

3 Now first thing we're going to do is preliminary  
4 instructions for this criminal case. Before we begin the  
5 trial, I'd like to tell you about what will be happening. I  
6 want to describe how the trial will proceed and be conducted  
7 and explain what we'll be doing, that is the lawyers, the  
8 court, and even you. At the end of the trial we'll give you  
9 more detailed guidance on how you are to go about reaching  
10 your decision, I'll explain to you how the trial will proceed  
11 and give you an overview of the claims.

12 In this case, the defendant is charged with two  
13 felony counts for violating 18 U.S.C. Section 2252 and 2256,  
14 transportation of child pornography and possession of child  
15 pornography. I will give you detailed instructions on the  
16 law at the end of the case on those, those instructions will  
17 control your deliberations and decision. But in order to  
18 help you follow the evidence, I will now give you a brief  
19 summary of the elements of the offense that the government  
20 must prove to make its case.

21 Generally, to prove the defendant guilty of  
22 transportation of child pornography, the government must  
23 prove each of the four following elements beyond a reasonable  
24 doubt: First, that the defendant knowingly transported a  
25 visual depiction as that term will later be defined; and two,

1     that that visual depiction was transported in or affecting  
2     interstate or foreign commerce, or as the visual depiction  
3     was produced using materials that had been transported in or  
4     affecting interstate commerce; three, that that visual  
5     depiction was child pornography as that term will later be  
6     defined for you; and four, that the defendant knew of the  
7     sexually explicit nature of the material and that the visual  
8     depiction was of an actual minor engaged in that sexually  
9     explicit conduct.

10           Generally to prove that the defendant is guilty of  
11     possession of child pornography, the government must prove  
12     each of the following four elements beyond a reasonable  
13     doubt. This is the second count. First of all, the first  
14     element, that the defendant knowingly possessed a visual  
15     depiction as that term will later be defined; two, that that  
16     visual depiction was transported in or affecting interstate  
17     or foreign commerce; or usual depiction, the usual depiction  
18     was produced using materials that had been transported in or  
19     affecting interstate or foreign commerce; and three, that the  
20     visual depiction was child pornography as that term will  
21     later be defined; and fourth, excuse me, that the defendant  
22     knew of the sexually explicit nature of the material, and  
23     that the visual depiction was of an actual minor engaged in  
24     that sexually explicit conduct.

25           In addition, the government seeks pursuant to 18

1 U.S.C. Section 2253(a)(3), the criminal forfeiture of three  
2 items of the defendant's personal property that were  
3 allegedly used or intended to be used in the course of  
4 committing the previously described offenses. Those three  
5 items are a Toshiba laptop computer, an 8-gigabyte USB thumb  
6 drive and a 4-gigabyte USB thumb drive. The government's  
7 burden of proof with regard to the criminal forfeiture of  
8 these three items is by a preponderance of the evidence. And  
9 I'll explain the different burdens that you must follow.

10 What's the duty of the jury? It will be your duty  
11 to find from the evidence what the facts are. You and you  
12 alone are the judges of the facts. You will then have to  
13 apply those facts to the law as the court will give it to  
14 you. You must follow the law whether you agree with it or  
15 not. Nothing the court may say or do during the course of  
16 the trial is intended to indicate or should be taken by you  
17 as indicating what your verdict should be. That is solely in  
18 your province.

19 Now evidence, what's evidence? Evidence from which  
20 you will find the facts will consist of the testimony of  
21 witnesses, documents, or other things received into the  
22 record as exhibits, and any facts the lawyers agree or  
23 stipulate to, or that the court may instruct you to find.  
24 Certain things are not evidence and must not be considered by  
25 you and I will list them for you now. Statements, arguments,



1 and questions by the lawyers are not evidence. Objections to  
2 questions are not evidence. Lawyers have an obligation to  
3 their clients to make an objection when they believe evidence  
4 being offered is improper under the Rules of Evidence. You  
5 should not be influenced by the objection or by the court's  
6 ruling on it. If the objection is sustained, that means the  
7 witness does not have to answer the question. In that case,  
8 you must disregard the question and any response that was  
9 given to that question. If the objection is overruled, that  
10 means the witness will then be required to answer the  
11 question. In that case you should treat the answer like any  
12 other.

13 If you are instructed that some item of evidence is  
14 received for a limited purpose only, you must follow that  
15 instruction. Testimony that the court has excluded or told  
16 you to disregard is not evidence and must not be considered.  
17 Anything you have seen or heard outside the courtroom is not  
18 evidence and must be disregarded. You are to decide the case  
19 on the evidence presented here in this courtroom, and in this  
20 courtroom alone.

21 There are two kinds of evidence, direct and  
22 circumstantial evidence. Direct evidence is direct proof of  
23 a fact such as testimony of an eyewitness. Circumstantial  
24 evidence is proof of facts that which you -- from which you  
25 may infer or conclude other facts exist. I will give you

1 further instruction on these as well as other matters at the  
2 end of the case but have in mind that you may consider both  
3 kinds of evidence.

4 It will be up to you to decide which witnesses to  
5 believe, which witnesses not to believe, and how much of any  
6 witness' testimony to accept or reject. I will give you some  
7 guidelines for determining the credibility of witnesses at  
8 the end of the case.

9 Now direct and circumstantial evidence. I'm going  
10 to talk a little bit more about this because it's important  
11 that you understand first of all that you can accept both  
12 kinds of evidence. One is not given more weight than  
13 another. But the difference is direct evidence is evidence  
14 of an eyewitness so to speak, somebody who was present, saw,  
15 heard, smelled, can give some direct testimony about some  
16 observation that they made by their senses. They saw it,  
17 they heard it, they smelled it, something, okay. And  
18 circumstantial evidence is a little different. It's facts  
19 inferred from facts that lead to a logical conclusion.

20 Here's an example. The weather's warmed up. The  
21 snow on your front lawn may have melted, you look out there,  
22 you see the brown somewhat dark grass or whatever might be on  
23 your front lawn. You look out there tonight, that's the  
24 situation, you go to bed. You wake up in the morning, you  
25 look out on your lawn and it's covered with white fluffy

1 stuff, which is supposed to happen over the next couple days  
2 as a matter of fact. Now, you did not see it snow because  
3 you were in bed sleeping. But circumstantially, you can  
4 infer at some time during the night when you were sleeping,  
5 it snowed. A logical conclusion based on what you've seen in  
6 your life's experiences, okay, circumstantial evidence.

7 Now let's take it a step further. Let's say you  
8 have a paper boy, if they exist anymore, and they deliver  
9 your paper in the morning in your door at like 6:00 in the  
10 morning. You're up at 5:30, quarter to 6, check your door,  
11 no paper. You look out, you look out across your lawn,  
12 there's fresh snow, there's no footprints, there's no  
13 footprints up your walk to your front door, no paper. So  
14 circumstantially you say, I guess the paper boy hasn't come  
15 yet. You go back to your door at 6:30, you open it, there's  
16 a paper. You look out across your lawn, footprints across  
17 your lawn right up to your front walk to your front door, so  
18 circumstantially, based on the two things, you didn't see  
19 anybody deliver that paper but you know based on what you've  
20 seen from the footprints, the fact that the paper's in the  
21 door, that somebody delivered that paper.

22 You may not know who it was unless you have some  
23 further evidence like your, you know, paper boy is of a  
24 certain size, may wear certain type of boots where you could  
25 compare the footprints in the snow to his boots, maybe a

1 neighbor says I saw the paper boy down the street from your  
2 house just a few minutes later and you put all those facts  
3 together and circumstantially you can infer that it was a  
4 particular individual, maybe your paper boy that delivered  
5 your paper. Okay. So you get what I mean, that's the idea  
6 of circumstantial evidence, facts that lead you to some  
7 logical conclusion, okay, based on your life's experiences.

8 Now, let's talk about rules of a criminal case. As  
9 you know this is a criminal case. There are three basic  
10 rules about a criminal case that you must keep in mind.

11 First, the defendant is presumed innocent until  
12 proven guilty. The indictment against the defendant brought  
13 by the government is only an accusation, nothing more. It is  
14 not proof of guilt or anything else. The defendant therefore  
15 starts out with a clean slate.

16 Second, the burden of proof is on the government  
17 until the very end of the case. The defendant has no burden  
18 to prove his or her innocence or to present any evidence or  
19 to testify. Since the defendant has a right to remain  
20 silent, the law prohibits you from arriving at your verdict  
21 by considering that the defendant may not have testified. No  
22 inference for or against in any way, okay.

23 Third, the government must prove the defendant's  
24 guilt beyond a reasonable doubt. Now what do I mean by  
25 beyond a reasonable doubt? It is not some vague,

1 speculative, imaginary or inconceivable doubt. Nor is it a  
2 doubt based upon emotion, sympathy, prejudice, or upon some  
3 of you -- what some of you may consider to be an unpleasant  
4 duty. The government is not required to prove a defendant  
5 guilty beyond every conceivable or every possible doubt. But  
6 you should review all the evidence as you remember it, sift  
7 out what you believe, discuss it, analyze it, compare your  
8 views of the evidence with that of your fellow jurors and if  
9 that process produces in your mind some belief or conviction  
10 that you would be willing to accept without further  
11 hesitation if it was a matter of importance to you, then you  
12 may say that you have been convinced beyond a reasonable  
13 doubt. On the other hand, if going through that same process  
14 in your mind, your mind is wavering, or you are so uncertain  
15 that you would hesitate before acting if it were an important  
16 matter of your own, then you have not been convinced beyond a  
17 reasonable doubt and your verdict must be not guilty. I will  
18 give you further instructions on this point of law later, but  
19 bear in mind that in this respect, a criminal case is  
20 different than a civil case, different type of burden and the  
21 burden always remains with the government.

22 Let's talk about the course of the trial. In a few  
23 minutes we're going to begin this trial. First, the  
24 government will make an opening statement which is simply an  
25 outline to help you understand the evidence as it comes in.

1 Next, defendant's attorney may, but does not have to, make an  
2 opening statement. Opening statements are neither evidence  
3 nor argument. Now I say he may but does not have to because,  
4 once again, defendant has no burden, he can sit there and do  
5 nothing. It's up to him and his attorney to decide whether  
6 they want to do opening statements, whether they want to  
7 examine witnesses, or you know, whatever they want to do is  
8 totally within a defendant's right to decide. The government  
9 will then present its witnesses and counsel for the defendant  
10 may cross-examine them. Following the government's case, the  
11 defendant may, if he decides to, present witnesses or  
12 evidence and those witnesses, the government may  
13 cross-examine. After all the evidence is in, the attorneys  
14 will present their closing arguments to summarize and  
15 interpret the evidence for you, and the court will instruct  
16 you on the law. After that, you will retire to deliberate  
17 and render a verdict.

18 What's the conduct of a jury? Our law requires  
19 jurors to follow certain instructions in order to help assure  
20 a just and fair trial. I will now give you those  
21 instructions. Do not converse either among yourselves or  
22 with anyone else about anything related to the case. You may  
23 tell the people with whom you live and your employer that you  
24 are jurors and give them the information about when you will  
25 be required to be in court, but you may not talk with them or

1 anyone else about anything related to this case.

2 Do not at any time during the trial request,  
3 accept, agree to accept or discuss with any person the  
4 receipt or acceptance of any payment or benefit in return for  
5 supplying any information concerning this trial. You must  
6 promptly report directly to me any incident within your  
7 knowledge involving an attempt by any person to improperly  
8 influence you or any other member of this jury.

9 Do not visit or view the premises or place where  
10 the charged crime was allegedly committed or any other  
11 premise or place involved in this case. You must not use  
12 internet maps or Google Earth or any other program or device  
13 to search for or view any location discussed in the  
14 testimony. Do not read, view, or listen to any accounts or  
15 discussions of the case reported by newspapers, television,  
16 radio, the internet, or other news media. Excuse me. Do not  
17 attempt to research any fact, issue, or law related to this  
18 case whether by discussion with others, by research in a  
19 library or on the internet or by any other source.

20 In this age of instant electronic communication and  
21 research, I want to emphasize that in addition to not  
22 conversing face-to-face with anyone about the case, you must  
23 not communicate with anyone about the case by any other  
24 means, including by telephone, text message, e-mail, internet  
25 chat, chat rooms, blogs, social websites, such as Facebook,

1 MySpace or Twitter. You must not provide any information  
2 about the case to anyone by any means whatsoever. And that  
3 includes the posting of information about the case or what  
4 you are doing in the case on any device or internet site  
5 including blog, chat rooms, social websites, and any other  
6 means. You must also not Google or otherwise search for any  
7 information about the case or the law which applies to the  
8 case, or the people involved in the case, including the  
9 defendant, the witnesses, the lawyers, or even me, the judge.  
10 You can do any and all of that after the case is over, but  
11 not during this case.

12 Now ladies and gentlemen, I want you to understand  
13 why these rules are so important. First of all, our law does  
14 not permit jurors to converse with anyone else about the case  
15 or permit anyone to talk to them about the case, excuse me,  
16 because only jurors are authorized to render a verdict and  
17 only you have been found to be fair and impartial and only  
18 you have promised to be fair. No one else has been so  
19 qualified. Our law does not permit jurors to converse among  
20 themselves about the case until the court tells them to begin  
21 deliberations because premature discussion can lead to  
22 premature final decisions. We want to avoid that. Our law  
23 also does not permit you to visit a place discussed in the  
24 testimony. First of all, you cannot always be sure that the  
25 place is in the same condition as it was on the day in



1 question; second, even if it were in the same condition, once  
2 you go to a place discussed in the testimony to evaluate the  
3 evidence in light of what you see, you become a witness, not  
4 a juror. As a witness you may now have an erroneous view of  
5 the scene that may not be subject to correction by either  
6 party and that is just not fair.

7 Finally, our law requires that you not read or  
8 listen to any news accounts of the case and that you not  
9 attempt to research any fact, issue, or law related to the  
10 case because your decision must be based solely on the  
11 testimony and other evidence presented in this courtroom. It  
12 would not be fair to the parties for you to base your  
13 decision on some reporter's view or opinion or upon  
14 information you acquire outside of this courtroom.

15 Now these rules are designed to help guarantee a  
16 fair trial and our law accordingly sets forth serious  
17 consequences if the rules are not followed. I trust you  
18 understand and appreciate the importance of following these  
19 rules in accordance with your oath and promise, I know you  
20 will do so.

21 Finally, do not form any opinion until all the  
22 evidence is in. Keep an open mind until you start your  
23 deliberations at the end of the case.

24 If you wish, you may take notes, but if you do,  
25 please leave them in the jury room when you leave at night.

1 And remember, they are for your own personal use, they are  
2 not to be given or read to anyone else and if you do take  
3 notes, please do not let those note taking, that note taking  
4 distract you from what the witnesses have to say or how they,  
5 the witnesses may answer questions. Notes are not entitled  
6 to any greater weight than the memory or impression of each  
7 juror as to what the testimony may have been. Whether you  
8 take notes or not, each of you must form and express your own  
9 opinion as to the facts of the case. If you do not take  
10 notes, you should rely upon your own memory of what was said  
11 and not be overly influenced by the notes of other jurors.

12 Now, excuse me, note taking. Relatively new thing,  
13 we never, when I was trying cases, jurors were never allowed  
14 to keep notes. And there were some good reasons for it, I'm  
15 going to tell you about those. First of all, we have a court  
16 reporter, a professional whose responsibility is to take down  
17 each and every thing that's said in this courtroom and going  
18 to make sure people talk one at a time for that very purpose.  
19 We're a court of record, and if we have a question about some  
20 aspect of testimony, we can always have it read back. We can  
21 have Jodi go and find it for us, and she'll read it back for  
22 us, okay.

23 Secondly, it is very important when you're watching  
24 a witness testify, that you not only hear what they say, but  
25 you watch how they testify. People's demeanor is important.

1 When you're trying to decide, even if it's a couple of kids  
2 who may have broken something in your house, and you're  
3 asking them questions about what happened, it's not only what  
4 they say, it's how they say it that's important, right, and  
5 it's making a determination of what happened and who did  
6 what. That's how we decide things. So people's demeanor,  
7 the way they answer questions, their reactions on the witness  
8 stand are important and we don't want note taking to  
9 interfere with you making those observations, because that's  
10 how we make decisions about who is telling us the truth,  
11 okay.

12 Now, so why do we allow note taking? Because in  
13 recent years I think the courts have recognized that some  
14 people just remember things better if they have a notepad and  
15 they jot things down. A lot of people just listen that way,  
16 and are able to retain things that way. If you're one of  
17 those people, that's fine. But just understand, don't let it  
18 interfere with you observing the witnesses well and  
19 understand that they'll be kept here in the jury room at  
20 night, they're not to leave this courthouse, they're court  
21 exhibits which will stay here and will be locked up at night  
22 and they're for your own personal use only.

23 And I would say this. We don't expect this to be a  
24 long trial. If there was a trial that was going on for  
25 weeks, then maybe note taking becomes more important for you,

1 because there's going to be a long list of multiple witnesses  
2 just to keep track in your own head, but if you're one of  
3 those people who feel more comfortable listening and paying  
4 attention and hearing what's being said by having a notepad  
5 to jot down, feel free to do it. Okay. That's your choice.  
6 Any questions? About your role or what we're going to be  
7 doing? Okay. We're going to proceed now with opening  
8 remarks and we're going to start with the government.  
9 Ms. Thomson, when you're ready.

10 MS. THOMSON: Thank you, your Honor. On May 24,  
11 2009, Joseph Jenkins entered Canada from Jefferson County.  
12 He had with him a Toshiba laptop and two thumb drives and on  
13 that laptop and on those thumb drives together were a total  
14 of 30 -- over 3800 images of child pornography, and over a  
15 hundred videos of child pornography. His laptop. His thumb  
16 drives. His collection that he was taking with him on his  
17 trip to Canada.

18 Good afternoon. As you may recall earlier, my name  
19 is Tamara Thomson and together with Gwen Carroll, we  
20 represent the United States of America. And it is our  
21 pleasure to present this case to you. Sitting at trial table  
22 is Chad Willard, he's a special agent with Homeland Security.  
23 Also his pleasure to bring this case before this jury.

24 At Alexandria Bay, there begins the border to  
25 Canada at the Port of Lansdowne and at that border point,

1     there is a border checkpoint, and when we were talking in  
2     voir dire, I believe most of you actually indicated that you  
3     had crossed a border so you have some familiarity with a  
4     border checkpoint.

5             Now the purpose of those border checkpoints are to  
6     inspect people and things that go into Canada. And so  
7     Canadian Border Service Agency officers look to see what's  
8     coming in and who's coming in, and the purpose is they want  
9     to make sure that for the people, they don't allow anyone in  
10    who's unauthorized and for the goods, they don't allow any  
11    goods that are unauthorized or illegal or may be subject to  
12    taxation. So as a result, they have a border checkpoint.  
13    That border checkpoint at the Port of Lansdowne begins with a  
14    primary inspection. On May 24, 2009, morning hours, at  
15    primary inspection lane number 5, was Border Services Officer  
16    Pedro Sousa-Dias and you'll hear testimony from him that that  
17    morning he was working inspection lane number 5 and at  
18    approximately 9 a.m., a Navy 2003 Dodge pickup truck carrying  
19    a trailer that had on its bed two ATV vehicles in tow came  
20    into his lane and he encountered the defendant Joseph  
21    Jenkins.

22            Now the defendant was the only one in that vehicle.  
23    He was the driver, sole occupant of the truck. And so when  
24    he identified himself as Joseph Jenkins, Officer Sousa-Dias  
25    did what you do at a border checkpoint and he asked some

1 questions. When he asked those questions, he noticed,  
2 because it's his job to do, to pay attention to the people  
3 and the things that are coming into Canada, he noticed that  
4 the defendant appeared to be nervous. He noticed that the  
5 defendant was avoiding eye contact. And as a result, he  
6 decided that he should defer him into immigration to have a  
7 check to make sure everything was okay. So the defendant was  
8 directed to go inside to immigration for a criminal check, to  
9 make sure that he was permitted to enter Canada.

10 And when he went inside, he encountered Melany Boyd  
11 who at that time was another border services officer who was  
12 at the immigration counter in the secondary building. Joseph  
13 Jenkins presented her with his passport and the slip that he  
14 received from Officer Sousa-Dias for the in -- for the  
15 secondary, and she began her interview, again basic  
16 questions, basic questions that these officers do routinely.  
17 She asked him his citizenship, he indicated he was a United  
18 States citizen, she asked him the purpose of his trip, he  
19 indicated he was going to visit his parents who had a cottage  
20 in Quebec and were summer residents there. Asked how long he  
21 was going to stay, he indicated one week. And they asked --  
22 Officer Boyd asked him what his occupation was and he  
23 indicated he was a self-employed electrician. You'll hear  
24 testimony from Officer Melany Boyd, when she was asking him  
25 these questions and trying to get this information from

1 Mr. Jenkins, that he appeared nervous, that he was evasive  
2 with his answers and he also wasn't making eye contact. She  
3 also made an observation that the defendant, when he pulled  
4 into that secondary area, was driving the truck with a  
5 trailer attached and she noticed that he had a lot of  
6 personal belongings.

7 Now given his answers about his purpose for the  
8 trip and how long he was going to stay, and knowing that she  
9 heard him say he was a self-employed electrician, she thought  
10 that perhaps he intended to stay in Canada for longer and she  
11 decided it would be prudent for a vehicle examination because  
12 of those factors. His behaviors plus all of the things that  
13 he was bringing into Canada. And so she directed him for a  
14 vehicle examination.

15 Now three officers came to perform that vehicle  
16 examination. These are also border services officers and  
17 you'll hear testimony from these officers, Officers Tristan  
18 Garrah, Jarret Johnston, and Glen Hache, and their job was to  
19 conduct a vehicle inspection. And in the course of doing  
20 that job, they also had an opportunity to talk to the  
21 defendant. And when one of the officers did talk to Joseph  
22 Jenkins, he stated he was the owner of the truck, he was  
23 aware of what was inside it, and that he had in fact packed  
24 it himself, and so the vehicle inspection began.

25 Toshiba laptop was located in the rear passenger's

1 seat, and he was asked about that laptop and the defendant  
2 indicated that the laptop was new, that he had had it for  
3 over a year, he used it for personal use and he had it stored  
4 in a box and he indicated that he had it in the box because  
5 he didn't possess a carrying case for it. So Officer  
6 Johnston, with the authority to do so, opened up that Toshiba  
7 laptop and when he opened it up, he clicked on a file  
8 shortcut, you'll hear testimony about what that is, clicked  
9 on that file shortcut, and what he saw gave him some pause.  
10 He saw a video of a young female and she wasn't wearing any  
11 clothing. He viewed another video, gave him more pause for  
12 concern and he realized that perhaps out in this open area  
13 wasn't appropriate to really see this stuff where the public  
14 could see and he thought it was appropriate for further  
15 examination to be done because what was on that computer may  
16 be prohibited. And so he brought that laptop inside the  
17 building for further inspection. And while he was viewing  
18 those items, other officers also viewed items on that laptop  
19 and they also had been doing the search of Mr. Jenkins'  
20 truck, and while doing the search they recovered other items  
21 that became significant. Those items included another  
22 laptop, three thumb drives, testimony that those thumb drives  
23 included a thumb drive with a storage capacity of 2  
24 gigabytes, 4 gigabytes, and 8 gigabytes. Recovered some  
25 compact disks, a Belkin notebook card, an Olympus camera and



1 Motorola cellular phone. Those were the items that were  
2 recovered from the truck and they were brought inside, again,  
3 for further examination.

4 Now at this point, defendant asked why his laptops  
5 were being brought inside. And the officers asked  
6 Mr. Jenkins if he had child pornography on his computer, and  
7 he stated, not to my knowledge. I don't think so. He was  
8 asked, have you ever downloaded child pornography? And again  
9 his response was, no, I don't think so.

10 Now inside that building an examination was  
11 conducted of an 8-gigabyte thumb drive, and when that was  
12 examined, officers found a video whose title gave them a  
13 sneak preview of what they were to see. That video, and  
14 you'll also hear it called multimedia so those two words  
15 you'll hear throughout this trial, but that video was titled  
16 "9YO Vicky stripping and sucking kiddie pedo legal underage  
17 preteen" is the title of the video. And the officers watched  
18 the video, a minute and 39 seconds in length. The video  
19 began of a girl fully dressed and that girl was prepubescent,  
20 meaning she hadn't hit puberty yet, it was a young girl, and  
21 as the video continued she began to undress until she got all  
22 the way down to just stockings. And as the video ended, the  
23 young girl approaches the camera, man unzips his pants  
24 exposing his penis and performs oral sex. That's the video  
25 the officers saw from that 8-gigabyte thumb drive. They

1 watched others and you'll hear the testimony about those  
2 other videos that they viewed and as a result of watching  
3 that video and others, the defendant Mr. Jenkins was taken  
4 into custody and charged with violating Canadian law.

5 You will hear testimony that a Canadian Border  
6 Service Agency officer, criminal investigator, sat with the  
7 defendant and she asked him if he knew what child pornography  
8 was and he said that he did. And when she told him that some  
9 child pornography was found on the media devices found in his  
10 truck, the defendant's reply was to ask to speak to his  
11 parents.

12 You'll hear testimony that a trial was set in  
13 Canada, that trial for October 2010, but the defendant did  
14 not appear for that trial, and therefore, the trial did not  
15 go forward.

16 Now, we talked a little bit about the port of entry  
17 at Lansdowne. Before you hit that port of entry, you come  
18 through Jefferson County and Alexandria Bay, and also on that  
19 side are United States investigators including special agents  
20 with Homeland Security. Homeland Security has this side of  
21 the border, American side of the border, and when the  
22 defendant did not appear for those charges in Canada and when  
23 that trial did not go forward, U.S. authorities went forward  
24 here, and set about to do so. Agents began their own  
25 investigation and took steps to obtain that evidence from

1 Canada. And they were able to retrieve the items from Canada  
2 and in July of 2011, an agent appeared before a federal  
3 magistrate judge and obtained a search warrant to search each  
4 of the items that was recovered from the defendant at the  
5 Port of Lansdowne after he had crossed into the Port of  
6 Lansdowne from Jefferson County, and they obtained those  
7 items that had been seized from the defendant from the  
8 Ontario Provincial Police.

9 Once in the custody of HSI, those items were  
10 examined and you will hear testimony from the forensic agent  
11 who examined the items, and that is Brian Braisted. He is a  
12 computer forensic agent and he is trained to do forensic  
13 examinations of computer and other electronic media and cell  
14 phones and the like.

15 In this trial he will testify as to what his  
16 analysis found, and he will testify in the area of computer  
17 forensics regarding how he did the examination, and all of  
18 the results that he found. You will hear testimony that that  
19 examination involved him finding over 3,800 images and over  
20 100 video files on each of those three items that I've  
21 indicated, the Toshiba laptop, the 8-gigabyte thumb drive,  
22 and the 4-gigabyte thumb drive, and each of those three  
23 items, the laptop and the thumb drives, are electronic media  
24 that's not made in the state of New York.

25 You will hear testimony with regard to where those

1 image files were found, where the video files were found.  
2 You will hear testimony about the registry information for  
3 that laptop computer, that it was registered to a user by the  
4 name of Joe. You will hear testimony about web pages that  
5 were saved to the Toshiba laptop as favorites. You will hear  
6 testimony that a photograph was recovered from that Toshiba  
7 laptop, photograph of the defendant, because as he  
8 acknowledged at the border, it was his laptop.

9 Agent Braisted will show you the evidence, you'll  
10 see the laptop computer and he will also walk through various  
11 dates that were forensically significant, dates that show  
12 activity on that computer, not just activity that involved  
13 saving and where child pornography was saved but activity  
14 that was going on concurrently with the child pornography,  
15 such as e-mail accounts that were being accessed. Listen to  
16 the names of those e-mail accounts that were accessed on or  
17 around the same time the child pornography was detected on  
18 that computer. Agent Braisted will also show you not just  
19 what that computer was in its form, you've all seen a laptop,  
20 he'll show you what it looked like when he examined it. He  
21 will show you screen shots of what was on that computer. He  
22 will show you screen shots of the information that was saved  
23 into that computer, and he will explain the significance of  
24 his findings. In summary, you will hear that on the Toshiba  
25 laptop, there were multiple video files containing child

1 pornography in a folder that was called New Folder 2, a  
2 folder that was saved to the desktop.

3 On the desktop's user account Joe, you will hear  
4 testimony of the graphic files, again we often call them  
5 graphic or image or picture files, and you'll hear testimony  
6 where it was found in the system volume information and he'll  
7 explain to you what that means. You'll also hear testimony  
8 that installed on that Toshiba laptop and on the Compaq  
9 laptop was file wiping software. CCleaner, and you'll hear  
10 what that means forensically.

11 You'll hear testimony about registration of thumb  
12 drive use, how looking at the Toshiba laptop, it's possible  
13 to establish whether or not any particular thumb drive had  
14 ever been mounted to the laptop and you will hear testimony  
15 that both the 8-gigabyte and the 4-gigabyte thumb drives both  
16 had child pornography on it, were mounted into the Toshiba  
17 laptop. You will also hear internet history artifacts  
18 showing websites that were accessed by the user of that  
19 computer. Most of the titles of those websites give the  
20 subject away. You will also hear from Agent Brian Braisted  
21 that on that 8-gigabyte thumb drive he located 96 videos and  
22 15 picture files of child pornography, and on the 4-gigabyte  
23 thumb drive, 10 videos, 3,266 images of child pornography.  
24 Also on that 4-gigabyte thumb drive you'll hear about a  
25 document that was saved to that thumb drive, that document,

1     you'll receive testimony, you'll get to see it contained a  
2     phrase "Lolita House XXX", and again, oftentimes the title  
3     lets you know exactly what you might expect to find. There's  
4     a file name referenced in that text document of a Sasha\_S3,  
5     and you'll also hear testimony that that video file was found  
6     on the 8-gigabyte thumb drive and you will get to see a clip  
7     of that video.

8             Where there was no child pornography found on  
9     particular media, Agent Braisted will testify to that as  
10    well. He'll tell you exactly what he found and exactly which  
11    pieces he analyzed. And Agent Braisted will take you through  
12    that forensic examination. It will be lengthy testimony, but  
13    it's very important because it explains exactly how that  
14    child pornography came to that laptop and exactly what was  
15    contained on that laptop.

16            And there's one more thing that you're going  
17    to see. We talked a little bit about it in the voir dire.  
18    The court forewarned you about it and so now I'd like to  
19    forewarn you about it as well. You're going to see the  
20    pictures and you're going to see the videos themselves. And  
21    we understand they are difficult to view, and just so you  
22    know, we are not going to show all 3,800, and a hundred  
23    videos to you. We are going to show you a very, very small  
24    portion. We will show you respect, and we will show the  
25    children depicted in those images and those videos respect

1 and we'll show you a very small portion. We will show them  
2 to you because they are the evidence in this case, and as  
3 difficult as it is to have to look at it and watch it, it's  
4 the evidence in this case.

5 The images themselves will be given to you in  
6 a binder, each one of you will have your own copy of a  
7 binder. On the front page of the binder we'll show you where  
8 that image was found and on the reverse side will be the  
9 image itself. As I indicated, we will limit it as much as  
10 possible, but as we bear the burden of proof in this case, we  
11 must show you what the defendant had on his laptop, and on  
12 his thumb drives.

13 As a result of what he had, and going from  
14 Alex Bay going into Canada, he was charged with two counts in  
15 the United States of transporting child pornography and  
16 possessing child pornography, and that first count is that on  
17 or about May 24, 2009, the defendant violated Title 18,  
18 Section 2252A(a)(1), 2256(8)(a), by knowingly and unlawfully  
19 transporting child pornography, and Count 2 charges on or  
20 about May 24, 2009, Joseph Jenkins violated Title 18, United  
21 States Code, Section 2252A(a)(5)(B) and 2256(8)(a).

22 On May 24, 2009, the defendant, Joseph  
23 Jenkins, transported and possessed child pornography. He  
24 drove his truck to Canada with his laptops and his thumb  
25 drives. All that he packed and all that he acknowledged were

1 his, including that Toshiba laptop and including those two  
2 thumb drives. He transported that collection from Jefferson  
3 County into Ontario, Canada.

4 After the last witness has testified and after  
5 all the evidence has been presented to you, we will stand  
6 before you again and on behalf of the United States of  
7 America, we will ask you to return a verdict of guilty on  
8 those two counts, because he transported it, and he possessed  
9 it. Thank you.

10 THE COURT: Okay, thank you, Counsel. Defense  
11 counsel, do you choose to make an opening statement?

12 MR. GOLDSMITH: We do, your Honor.

13 THE COURT: Okay, proceed when you're ready.

14 MR. GOLDSMITH: Thank you. May I approach?

15 THE COURT: You may.

16 MR. GOLDSMITH: Not to my knowledge. Not to my  
17 knowledge. A phrase that the government has just told you it  
18 is going to have witnesses testify Mr. Jenkins said on  
19 May 24th, 2009. Knowledge, as the government, as the court  
20 has also explained briefly, and as you're going to hear  
21 several instructions later on, the key element in the crimes  
22 charged against Mr. Jenkins before this court that you as the  
23 jury will be deciding. The government meets its burden of  
24 proof if it can establish all of the elements beyond a  
25 reasonable doubt.



1 Ladies and gentlemen, I will reintroduce myself.  
2 I'm Aaron Goldsmith, and I have the pleasure of representing  
3 Joseph Jenkins in this trial today. I want to thank you for  
4 all of the time and attention that you spent already in this  
5 process, and certainly for the time and attention that we  
6 expect from you in the coming week.

7 As you've heard some discussion about, by the  
8 government, by the court, you will hear more about the  
9 presumption of innocence. In a court of law in the United  
10 States of America, an individual facing criminal charges is  
11 presumed innocent until proven guilty beyond a reasonable  
12 doubt. Ladies and gentlemen, that means that right now,  
13 4:30 p.m. on February 3rd, 2014, as we, the lawyers in this  
14 case, have been presenting opening arguments to you, Joseph  
15 Jenkins stands before you an innocent man. He remains  
16 innocent in this courtroom, unless you the jury find that the  
17 government proves each and every element of the crimes  
18 charged against him beyond a reasonable doubt. And the court  
19 at the close of this case will instruct you further, as to  
20 what those -- that means legally, as to what those elements  
21 are.

22 The government, as the court has also instructed  
23 you, bears the burden of proof at this trial. As the court  
24 has discussed a bit during our jury selection process,  
25 Mr. Jenkins bears absolutely no burden whatsoever. But it's

1     that burden of proof that brings me into what I want you as  
2     the jury to focus on at this trial. As part of your role,  
3     responsibilities, as your jobs as the jurors, seek out that  
4     burden that the government is saddled with. By that burden,  
5     every witness that takes that stand, listen to them, watch  
6     them, read any documents that the government may try to  
7     introduce at this case. Watch and look and examine every  
8     piece of evidence that the government is going to try and  
9     introduce in this case through those witnesses. Listen to  
10    what those witnesses saw, what they heard, what they did, and  
11    scrutinize every one of those witnesses, every one of those  
12    documents, every piece of evidence that comes into this  
13    courtroom. Does that evidence show, does that testimony show  
14    Mr. Jenkins did what the government has to prove beyond a  
15    reasonable doubt or what they claim he did? Can they  
16    establish all of the elements of their case with what those  
17    witnesses and what that evidence is going to prove?

18           As we have also discussed, as the court, the  
19    government, myself, this evidence is unpleasant, and it is  
20    necessary to look past the unpleasantness of what that  
21    evidence is, to scrutinize whether the government has proven  
22    its case. It is difficult and we all acknowledge that. But  
23    again, it must be looked past. When you're looking at the  
24    evidence, when you're watching the witnesses, when you are  
25    listening to the witnesses, when you are weighing what those

1 witnesses say, when you scrutinize them, scrutinize them not  
2 only for what they saw and heard and did, but for what they  
3 did not see, did not hear, did not do in their capacity, what  
4 difference was it in what they saw or did or were able to  
5 achieve that is different from what another agent or  
6 different authority was able to produce in this case.

7 I submit to you the evidence will show that there  
8 are differences in what law enforcement agents and agencies  
9 were able to produce in the investigation of this case. That  
10 will bear out at this trial, and that will bear into your  
11 analysis of whether the government has met its burden. Which  
12 again, I submit to you, they will not be able to do.

13 The court provided an example to you not too long  
14 ago in discussing the nature of circumstantial evidence. The  
15 paper boy delivering the paper every morning. Paper on the  
16 front porch, footsteps in the snow. Time frame in which seen  
17 before and there was nothing, only a short while later, there  
18 was something. Paper, the footprints, the snow that would  
19 show the footprints. In this particular case, I submit to  
20 you that when the government finishes all of its witnesses,  
21 finishes bringing in all of its evidence and testimony,  
22 there's not going to be footprints, there's not going to be  
23 the footprints of Mr. Joseph Jenkins. Without any other  
24 possibility of who those footprints were, who left them  
25 there, when they left them there, and the circumstances that

1 they left those footprints, when the witness comes up and  
2 testifies Mr. Joseph Jenkins said, not to my knowledge,  
3 you'll remember that. And you'll remember that you didn't  
4 see the footsteps of Mr. Joseph Jenkins in the snow. And at  
5 the close of this case, I believe that after due deliberation  
6 and scrutiny of every witness that you see and hear, scrutiny  
7 of the evidence that you see, that you will find Mr. Jenkins  
8 not guilty. Thank you.

9 THE COURT: Thank you, Counsel. Ladies and  
10 gentlemen, I have 4:38, eight minutes past my time to get you  
11 home. So I'm going to let you go home, we'll have our first  
12 witness called tomorrow morning. Please do not discuss the  
13 case with anyone. If anyone approaches you, tries to talk to  
14 you about this case, I need to know about it immediately. As  
15 I indicated, please be in the jury room so we can start at  
16 9:00, there will be some breakfast food in there for you. Do  
17 not view, read, or listen to anything to do with this case.  
18 Should it be reported anywhere, put it aside, shut it off,  
19 turn it off, whatever, and you can do all that stuff after  
20 the case is over with but we do not want you improperly  
21 influenced during the pendency of this trial. Okay. Have a  
22 good night, travel safe, and we'll see you tomorrow morning.

23 (Jury Excused, 4:38 p.m.)

24 THE COURT: Okay. The jury's been excused for the  
25 night. Government will start at 9:00, have your first

1 witness here ready to go and we'll get started. Is there  
2 anything else we need to address before we adjourn for the  
3 night? Government, no?

4 MR. GOLDSMITH: Just as a simple matter of  
5 courtesy, I wonder if the government might tell me the first  
6 few witnesses they plan on calling tomorrow.

7 THE COURT: That's between you and them. I'll let  
8 you do it off the record after I've concluded proceedings  
9 here and you can talk to them about it. Whatever you guys  
10 want to work out is fine with me. Anything else,  
11 Mr. Goldsmith?

12 MR. GOLDSMITH: Not from defense, no.

13 THE COURT: Okay. We will see you tomorrow  
14 morning.

15 THE CLERK: Court's in recess.

16 (Court Adjourned, 4:39 p.m.)  
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I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official  
Realtime Court Reporter, in and for the United States  
District Court for the Northern District of New York, DO  
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Dated this 23rd day of May, 2014.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR  
Official U.S. Court Reporter